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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/435,854 11/08/99 PRYOR

T P00891US3

EXAMINER

WM02/0801

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SUITE 900  
1199 NORTH FAIRFAX STREET  
ALEXANDRIA VA 22314

ABDUL SELAM, A

ART UNIT

PAPER NUMBER

2674

DATE MAILED:

08/01/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
**09/435,854**

Applicant(s)  
**Pryor**

Examiner  
**Abbas Abdulsalam**

Group Art Unit  
**2674**



- ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

- ☒ Claim(s) 1-27 is/are pending in the application.
- Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-27 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- ☐ Notice of References Cited, PTO-892
- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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### DETAILED ACTION

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-27 are rejected under the judicially created doctrine of double patenting over claims 1-48 of U. S. Patent No. 6008800 to Pryor since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows:

Regarding claims 1, 5, 7-8, 10-11, 16-17, 19, 21-23 and 27, the claimed steps of providing a computer controlled display screen, obtaining one or more optical images containing data, determining locations, and the optical determination of position points on objects are met by the patent claim 45. However, Pryor patent claim 45 does not specifically state a method of gaming and simulation. Instead, it teaches about an interactive system involving a user and a means for forming electro-optical image formation.

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Therefore, it would have been obvious to one skilled in the art that an interactive system and the stated means as claimed in the patent and computer game and simulation as claimed in the present application correspond each other and perform the same function.

Regarding claims 2-3, 6, 13- 15 and 24- 26, they are met by the patent claim 47. The patent claim 47 uses "detector means" instead of "determining steps".

Therefore, it would have been obvious to one skilled in the art to recognize that detector means corresponds to determining steps and statements in the patent claim 47 and the stated claims of the present application both serve the same purpose and teach the use of cameras in the similar scenario.

Regarding claims 4, 9, 12, 18, and 20, they are met by the patent claim 46. The patent claim 46 teaches about " the displayed image video".

Therefore, it would have been obvious to one skilled in the art to recognize that the displayed video image is a natural size visible enough to be viewed

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

### **Conclusion**

3. Any response to this actions should be mailed to

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Commissioner of Patents and Trademarks

Washington, D.C. 20231

Any inquires concerning this matter should be addressed to Abbas Abdulsalam Tel. (703) 305-8591. The examiner can normally be reached on Monday through Friday (9:00-5:30).


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Hjerpe can be reached on (703) 305-4707. The fax numbers for the organization where this application or proceeding is assigned is (703) 308-6303.

Any inquires of a general or relating to the status of this application should be directed to the receptionist whose telephone number is (703) 305-4700.

Abbas Abdulsalam

Examiner

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**RICHARD HJERPE**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 2600**